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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th April 2010

No. 2939-1/1(BH)-6/97-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th February 2010 in Industrial Dispute Case No. 139 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Member-Secretary, Cadre Committee, Mayurbhanj Central Co-operative Bank Ltd., Baripada and its workman Shri Kartik Ch. Bhakta was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 139 OF 2008

Dated the 4th February 2010

Present :

Shri P. C. Mishra, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Member-Secretary, Cadre Committee, The Mayurbhanj Central Co-operative Bank Ltd., Baripada, Dist. Mayurbhanj.	... First-party Management
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And

Shri Kartik Chandra Bhakta, At Pathar, P.O. Chakuli, Dist. Mayurbhanj.	... Second-party Workman
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Appearances :

Shri Prasanna Kumar Chakra Authorised Representative	.. For the First-party Management
Shri Kartik Chandra Bhakta	.. Secondy-party Workman himself

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No.6269/li-I-BH-6/97-L.E., dated the 27th May 1997 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Insustrial Tribunal, Bhubaneswar vide its Order No. 4138/li/21-32/2007-L.E., dated 4-4-2008.

“Whether the dismissal of Shri Kartik Chandra Bhakta, Brach Manager of Bankisole LAMPESCS Limited from services with effect from 24-8-95 by the Member -Secretary, Cadre Committee of M/s. Mayurbhanj Central Co-operative Bank Limited, Baripada is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the workman in brief is that initilaly he was serving as Secretary, Bankisole Service Co-operative Society since 10-2-64 and after amalgamation of the Service Co-operative Societies with the LAMPESCS he served under the Bankisole LAMPESCS with effect from 26-3-77 till he was dismissed from service on 24-8-95. It is averred in the claim statement that before dismissing him from service, the management put him under suspension vide Order No. 5906, dated the 6-2-88 on flimsy grounds and during the period of suspension he was not paid with any subsistence allowance. It is alleged that though he was charge-sheeted but the enquiry conducted into such charges was not at all fair and he was not afforded with sufficient opportunity to defend himself in the said enquiry. In view of the above, the workman has prayed for his reinstatement in service with full back wages.

3. The management filed its written statement stating therein *inter alia* that the reference of the dispute is not maintainable and that the workman having committed serious misconduct, a proceeding was drawn up against him and as in the enquiry he was found guilty of the charges, the punishment of dismissal was inflioted on him vide Order No. 2674, dated the 24-8-95. It is specifically stated in the written statement that since the workman was allowed sufficient opportunity to defend in the enquiry as well as before the Disciplinary Committee and he also availed the same, the action of the management needs no interference and accordingly it has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :-

ISSUES

- (1) Whether the dismissal of Shri Kartik Chandra Bhakta, Branch Manager of Bankisole LAMPCS Limited from services with effect from 24-8-95 by the Member-Secretary, Cadre Committee of M/s. Mayurbhanj Central Co-operative Bank Ltd., Baripada is legal and/or justified ?
- (2) If not, what relief he is entitled to ?

5. The record discloses that earlier an *ex parte* Award was passed in the dispute on 1-5-09 but subsequently on the prayer of the management the said Award was set aside and the management was afforded opportunity to cross-examine the workman and to adduce evidence from its side. The workman after being cross-examined by the management declined to adduce any more evidence and relied upon documents which have been marked as Exts.1 to 3. The management in its turn examined one witness and brought on record documents which have been marked as Exts..A to T.

6. The main thrust of argument advanced on behalf of the workman was that after putting him under suspension the management has not paid him any subsistence allowance and further the Enquiry Officer without recording evidence either from the side of the Society or affording any opportunity to him to defend against the alleged charges has submitted a report being biased by the Disciplinary Authority. It was further argued that the Disciplinary Authority also without considering his representation submitted to the second show-cause and the statement made in the personal hearing imposed the penalty of dismissal from service in a most arbitrary and whimsical manner. The management on the other hand submitted that the arguments advanced by the workman have no leg to stand owing to the fact that the workman had participated in the enquiry and with due adherence of the principles of natural justice the punishment of dismissal was inflicted on him taking into consideration the gravity of the charges levelled against the workman.

In view of the submissions of the parties, it is to be seen whether the allegations brought against the management by the workman have been substantiated by the workman on the basis of the materials available on record or the dismissal of the workman is quite legal as also justified, as contended by the management.

7. Ext.1 is the copy of the suspension order of the workman, dated the 6-2-88. Ext.A is the copy of the Staff Service Rules and clause 20 thereof deals with the suspension of an employee. In Para. 3 of the evidence the workman has deposed that from the date of his suspension he was not paid any subsistence allowance. Neither the workman was cross-examined on the point nor the management has produced any evidence showing that subsistence allowance was being paid to the work man () workman subsistence allowance during the period of his suspension.

8. The enquiry proceeding file comprising Exts. F. & G., the copies of the charge -sheets, dated the 10-5-88 & 3-5-89, Ext. J, the copy of the letter appointing the Enquiry Officer, Ext. K. the copy of the letter of the management furnishing the papers relating to the additional charges against the workman, Ext. H, the copy of the explanation of the workman and Ext. L, the copy of the enquiry report read with the evidence of the workman in his cross-examination that he had participated in the enquiry is sufficient to conclude that the workman was although present during conduct of the enquiry. However, the report of the Enquiry Officer, Ext.L does not reflect that he had examined any witness either from the side of the management or asked the delinquent to give any evidence in his defence. His report is nothing but a discussion relating to the documents produced by the management and his self appraisal to arrive at the conclusion. Not a single witness seems to have been examined by the Enquiry Officer in the enquiry conducted against the workman.

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

The procedure, as said above, having not been adopted by the Enquiry Officer, the enquiry as held against the workman in the case in hand can not be said to be either fair or proper.

9. There is yet another infirmity which renders the action of the management unsustainable. Vide Ext. M. the workman was asked to submit his show-cause as to why the punishment of dismissal from service and treating his period of suspension as such would not be imposed on him. The workman on receipt of Ext. M had furnished his reply as per Ext.O and a perusal thereof reveals that in Paras. 2 and 3 he had described about non-affording him any opportunity in the enquiry and about the non-payment of subsistence allowance. Similarly, Ext.R, the paper relating to the personal hearing of the workman discloses that the workman when was asked with reference to the charges and the report of the Enquiry Officer he had demanded to re-enquire the matter owing to the reason that no opportunity to lead evidence from his side was afforded to him in the enquiry. Neither the resolution of the Cadre Committee, Ext.S nor the punishment order, Ext.T deal with the above aspect, inasmuch as, the allegations of the workman in the matter have neither been deal with by the Cadre Committee nor by the Disciplinary Authority while passing the order Ext.T. There appears complete non-application of mind by the authority while considering the punishment to be imposed on the workman.

On the face of the above, it can not be said that the dismissal of the workman was preceded by a due enquiry and further the Disciplinary Authority by taking into consideration all aspects have

imposed the highest punishment of dismissal on the workman. Added to this, non-payment of subsistence allowance to the workman during the period of his suspension renders the action of the management to be non-sustainable in the eye of law. Hence, the action of the management in dismissing the workman from service with effect from 21-8-1995 is held to be neither legal nor justified.

10. Now coming to the question of relief to which the workman is entitled, it is found that the charges levelled against the workman are not of a minor or trivial nature and therefore, it will not be proper to foreclose the right of the employer to hold a fresh enquiry in accordance with law against the workman. But, before proceeding with such fresh enquiry, the management is directed to reinstate the workman in service forthwith and to pay him the subsistence allowance as per Rules for the period he remained under suspension. In the facts and circumstances of the case, the workman is however not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
4-2-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
4-2-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

K. C. BASKE
Under-Secretary to Government